83-97

IN THE

Supreme Court of the United States

1983 TERM

No.....

STATE OF NEVADA, by and through the WELFARE DIVISION of the DEPARTMENT OF HUMAN RESOURCES and MARTHA VINE, *Appellants*,

v.

JOHN M. VINE, *Respondent*.

and

WELFARE DIVISION OF THE STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, *Appellant*,

v.

JOHN MICHAEL VINE and MARTHA JO VINE, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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Date: July 15, 1983.

QUESTIONS PRESENTED

1. Whether a child is entitled to constitutional due process, notice and opportunity to be heard, in a termination of parental rights proceeding which terminates all of the child's rights.

    a. Whether a conclusive presumption that the interests of the child are the same as the parent petitioning for termination of parental rights is constitutionally valid.

INDEX

TABLE OF AUTHORITIES

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WELFARE DIVISION OF THE STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, Appellant,

v.

JOHN MICHAEL VINE and MARTHA JO VINE, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

The Petitioner State of Nevada respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Nevada entered in this proceeding on April 21, 1983.

OPINION BELOW

The opinion of the Supreme Court of the State of Nevada, not yet reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of the State of Nevada was entered on April 21, 1983. This petition for a writ of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether a child is entitled to constitutional due process, notice and opportunity to be heard, in a termination of parental rights proceeding which terminates all of the child's rights.

    a. Whether a conclusive presumption that the interests of the child are the same as the parent petitioning for termination of parental rights is constitutionally valid.

STATUTORY PROVISIONS INVOLVED

United States Constitution 14th Amendment; Section 1:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

Nevada Revised Statutes Chapter 128:

Copy attached in Appendix.

STATEMENT OF THE CASE

Martha and John Vine were divorced August 26, 1974. At that time Mr. Vine was ordered to pay $50.00 per month in child support for the parties' child, Amanda (hereinafter referred to as child). In July of 1975 Mrs. Vine sought to terminate the parental rights of Mr. Vine on the grounds of abandonment and neglect because Mr. Vine had neither visited nor paid any support for the child since the divorce. The termination of parental rights was granted by the Eighth Judicial District Court in and for the State of Nevada on July 15, 1975. That order stated in relevant part: "NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all parental rights of JOHN MICHAEL VINE, with respect to AMANDA LEIGH VINE, be, and they are hereby terminated and said child is declared free from any and all custody and control of said JOHN MICHAEL VINE." This order was entered in compliance with the terms of Nevada Revised Statutes §128.110. The child was not a party to that proceeding and no guardian ad litem was appointed to represent her interests.

In February 1981 Mrs. Vine and the child commenced receiving aid to families with dependent children. As a condition of receiving support, Mrs. Vine and the

child assigned any rights to support which they had to the State of Nevada (hereinafter referred to as "State"). 42 U.S.C. §602(a)(26); 45 C.F.R. 232.11; NRS 425.350(2). In June 1981 the State brought an action against Mr. Vine seeking support for his minor child. The Eighth Judicial District Court entered an order stating that a termination of parental rights terminated the parent's obligation of support and the child's right to support. The State appealed from that decision to the Nevada Supreme Court.

During the pendency of that appeal, the attorney for Mr. Vine had the Order Terminating Parental Rights amended nunc pro tunc to also terminate obligations on April 20, 1982. The amended order nunc pro tunc stated in relevant part: "NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all parental rights and duties of JOHN MICHAEL VINE with respect to AMANDA LEIGH VINE be, and they are, hereby terminated and said child is declared free from any and all custody and control of said JOHN MICHAEL VINE." The State sought to intervene in the termination proceeding on May 20, 1982, on the grounds that the amended order nunc pro tunc denied the child her right to constitutional due process of notice and opportunity to be heard in that the amended order affected her rights and she had not been made a party. The Eighth Judicial District Court denied the State's motion on July 1, 1982, on the basis that the court and parents intended that the termination of parental rights terminate

the child's right to support. The State thereafter appealed that determination on July 14, 1982, and consolidated the two appeals on December 29, 1982.

The State raised the question of the child's right to constitutional due process at the trial level. The Nevada Supreme Court acknowledged this in its decision where the Court stated:

> "The State also suggested that if the parental rights termination order cut off Amanda Vine's right to support, the failure to provide her with a guardian ad litem, notice, and a hearing in that proceeding violated her due process rights." See Appendix, page 2a.

The Court went on to hold that:

> "We believe that these various statutory provisions adequately demonstrate the legislative intention to have an order terminating parental rights completely sever the parent-child relationship, terminating all rights and obligations of both parent and child." See Appendix, page 5a.

In dealing with the issue of the child's constitutional right to due process, the Court said:

> "We have considered the other contentions raised by the appellants and found them to be without merit." Id., p. 6a.

The Nevada Supreme Court thus summarily dismissed the constitutional issue and interpreted the provisions of Nevada Revised Statutes governing termination of parental rights proceedings to have an unconstitutional effect by depriving children any right to due process.

REASONS FOR GRANTING THE WRIT

1. The decision of the Nevada Supreme Court has the effect of depriving children of their fundamental rights without due process.

The Fourteenth Amendment to the United States Constitution guarantees to all persons minimal due process of law when they are to be deprived of some right. Section 1 of the Fourteenth Amendment states: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This Court has taken notice that children are "persons" within the context of the Fourteenth Amendment. "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." In Re Gault, 387 U.S. 1, at 13, 87 S.Ct. 1428 (1967). "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S.

52, at 74, 96 S. Ct. 2831 (1976).

It has long been recognized by this Court that the relationship between parent and child is constitutionally protected. Stanley v. Illinois, 405 U.S. 645, 651 (1972); Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Lassiter v. Department of Social Services, 452 U.S. 18, 27 (1981); Santosky v. Kramer, 455 U.S. 745 (1982). It has further been established that ". . . freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-40 (1974); see also Moore v. East Cleveland, 431 U.S. 494, 499 (1977).

This Court has further held that any deprivation of a constitutionally protected right must be accompanied by notice and a hearing. The right to procedural due process is a constitutional guarantee. Vitek v. Jones, 445 U.S. 480, 490 Fn 6 (1980). The case of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), has long set the standard for minimal due process.

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id. at 313.

In the instant case, a child has been deprived of all rights to her parents through a termination of parental rights proceeding without having had even minimal due process afforded her. The child's rights that have been deprived include the right to support, the right to inherit, the right to social security benefits and other rights which attach to the parent-child relationship. It is clear from the directives of this Court that such a deprivation is not constitutional absent adherence to minimal due process protections.

This Court has recognized the severe nature of a termination of parental rights proceeding in the case of Santosky v. Kramer, 455 U.S. 745 (1982). In that case, this Court held that a parent's rights could not be terminated by a State by a mere preponderance of the evidence. It was held that the State must show clear and convincing evidence of unfitness before a parent could be deprived of his or her child. Id. at 768-70. In Santosky this Court further recognized that the child's interests do not necessarily coincide with the party seeking termination of parental rights and the child has an interest in preventing error from occurring. Id. at 760. This Court noted the serious effect of a termination on the child.

> "For a child, the consequences of termination of his natural parents' rights may well be far-reaching. In Colorado, for example, it has been noted: 'The child loses the right

> of support and maintenance, for which he may thereafter be dependent upon society; the right to inherit; and all other rights inherent in the legal parent-child relationship, not just for [a limited] period . . ., but forever.'" [Citation omitted.] (Emphasis added.) Santosky at 760, FN 11.

This is precisely the effect of the decision of the Nevada Supreme Court in the instant situation, without having provided the child with representation, notice or an opportunity to be heard.

The Nevada Supreme Court decision has the further effect of shifting the financial burden for the child from the natural parent to the federal and state government. The child has been deprived of the right to look to his or her natural parent for necessary support and may only look to the taxpayers should financial need arise and should a social program of assistance be available. Thus, the federal and state taxpayers are forced to assume the responsibility of supporting the child potentially until the child attains the age of majority and the child is foreclosed from looking to its natural parent for support as well as the other rights incidental to the parent/child relationship.

In Santosky this Court recognized that the natural parents and child had interests in preventing erroneous termination of their relationship. Id. at 760. In the instant case, one parent terminated the parental rights of the other parent. In such a situation, it is

submitted that the child has an interest independent of her parents to insure the prevention of termination of her independent rights. A failure to provide the child with notice and an opportunity to be heard necessarily deprives the child of her constitutional right to due process.

a. The decision of the Nevada Supreme Court creates a constitutionally invalid conclusive presumption that the interests of the child are the same as the person petitioning for a termination of parental rights.

In Stanley v. Illinois, 405 U.S. 645 (1972), the State of Illinois presumed that a father was unfit if he had never married the child's mother. The father was denied a hearing on his suitability as a parent based on this presumption. This Court stated:

> "The State's interest in caring for Stanley's children is de minimis if Stanley is shown to be a fit father. It insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family" Id. at 657-58.

The effect of the order of the Nevada Supreme Court in the case at bar is to conclusively presume that the child's interests are the same as the parent who

is petitioning for a termination of parental rights. Under the reasoning of Stanley, such a presumption does not comport with Due Process "when the issue at stake is the dismemberment of his family." The child faces the same dismemberment of her family as did Stanley and is entitled to notice and a hearing prior to her rights being terminated. The presumption created by the Nevada Supreme Court deprives the child of due process and therefore is constitutionally invalid.

The purpose of a termination of parental rights is to protect children from a parent shown unfit due to neglect, abuse or abandonment of the child. The child thus protected should not be seen as required to forever waive his or her rights without due process as the price imposed to be free of abuse, neglect or abandonment.

It is the State's position that a termination of parental rights pursuant to Nevada Statutes does not terminate the child's rights. The Nevada legislation on its face is not repugnant to the Due Process Clause, rather, the Nevada Supreme Court gave the legislation an unconstitutional interpretation and effect which is repugnant to the Due Process Clause.

A termination of parental rights in Nevada is irrevocable. The court has no power to set aside, change or modify the order. NRS 128.120. The statute which grants the court the authority to terminate a parent's rights clearly states the effect of the order:

> "[T]he court shall make a temporary or final order . . . judicially depriving the parent or parents of the custody and control of, and terminating the parental rights of, the parent or parents with respect to such minor person, and declaring such person to be free from such custody or control. . . ." NRS 128.110.

It is clear from the face of this statute that the child's rights and the parents' responsibilities are unaffected. The only rights of the parent that are terminated are the rights to custody and control of the child. The effect of a termination of parental rights is even more clear when read in conjunction with the effect of an adoption:

> "After a decree of adoption is entered, the natural parents of an adopted child shall be relieved of all parental responsibilities for such child, and they shall not exercise or have any rights over such adopted child or his property. The child shall not owe his natural parents or their relatives any legal duty nor shall he inherit from his natural parents or kindred." Relevant portion of NRS 127.160.

It is manifestly clear from these sections that the Nevada Legislature intended that a termination of parental rights merely terminate the parent's right to custody and control of the child. Neither the parental responsibilities nor the child's rights are terminated until the

completion of a valid adoption.

A close reading of Nevada Revised Statutes, Chapter 128, reveals that the child is not a party to a termination of parental rights proceeding. The child receives no notice, no opportunity to be heard, and no representation. The child's rights that attach to the parent-child relationship should therefore remain wholly intact.

The Nevada Supreme Court in this case held that a termination of parental rights in Nevada terminates all rights and obligations of both parent and child. State ex rel Welfare Division v. Vine, (Appendix, page 5a). This holding was issued notwithstanding the fact that the issue of the child's right to due process was properly raised at the trial level and was acknowledged to have been raised by the Nevada Supreme Court. See Appendix, page 4a. The Nevada Supreme Court has interpreted the Nevada Statutes to give the termination of parental rights chapter an unconstitutional effect and failed to address the constitutional Due Process issue.

The effect of the Nevada Supreme Court decision is to deprive children of their fundamental, constitutionally protected right to family without providing them with the protections guaranteed them by the Due Process Clause of the United States Constitution.

This substantial constitutional issue of children's rights to due process in a termination of parental rights action

justifies the grant of certiorari to review the judgment of the Nevada Supreme Court.

CONCLUSION

For the reasons presented above, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Nevada.

DATED: July 15, 1983

Respectfully submitted,

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APPENDIX

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, BY AND THROUGH THE WELFARE DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES AND MARTHA VINE, APPELLANTS, v. JOHN M. VINE, RESPONDENT.

No. 13727

WELFARE DIVISION OF THE STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, APPELLANT, v. JOHN MICHAEL VINE AND MARTHA JO VINE, RESPONDENTS.

No. 14264

April 21, 1983

Consolidated appeals from dismissal of RURESA action and order denying motion to intervene. Eighth Judicial District Court; Robert G. Legakes, Judge; Addeliar D. Guy, Judge.

Affirmed.

Brian McKay, Attorney General, *Roger D. Comstock*, Deputy, *Nancy Ford Angres*, Deputy, Carson City; *Terrance P. Marren*, Deputy, Las Vegas, for Appellants.

Robert K. Dorsey, Las Vegas, for Respondent.

OPINION

By the Court, MOWBRAY, J.:

In these cases the State of Nevada seeks to establish that an order terminating parental rights does not by operation of law also terminate a parent's obligation of child support. In light of the interlocking nature of parental rights and responsibilities, and the intention of the Legislature as evidenced by the legislative scheme, we construe the term "parental rights" to include both parental rights and parental obligations. Therefore, we affirm the judgment of the district court in both Case No. 13727 and Case No. 14264.

THE FACTS

John M. Vine and Martha Jo Vine were granted a decree of divorce in Clark County on August 26, 1974. Martha Jo Vine

was awarded custody of their year-old daughter, Amanda Leigh Vine, and John Vine was ordered to pay $50.00 per month for child support.

On July 15, 1975, Judge Addeliar D. Guy issued an order terminating all parental rights of John Vine with respect to his daughter, on the basis of Vine's complete failure to provide her with support or attention. The judge decreed that "all parental rights of John Michael Vine, with respect to Amanda Leigh Vine, be, and they are hereby terminated and said child is declared free from any and all custody and control of said John Michael Vine." Martha Jo Vine received sole parental rights over her daughter.

John Vine entered an appearance in the divorce and parental rights termination proceedings, but did not contest the actions of the court. He states that he consented to the termination of his parental rights on the express representation of Mrs. Vine's attorney that the termination order would cut off his support obligation.

On June 12, 1981, the State of Nevada filed an action against John Vine under the Revised Uniform Reciprocal Enforcement of Support Act, seeking both reimbursement for past welfare assistance payments and future support for Amanda Vine. In defense, John Vine produced the July 15, 1975 order terminating his parental rights. Judge Legakes dismissed the State's petition. The appeal in Case No. 13727 followed.

While the above appeal was pending, John Vine moved to correct the 1975 parental rights termination order *nunc pro tunc*, asserting that it was the intention and understanding of all the parties that the order terminated his parental duties as well as his parental rights. Judge Guy granted the motion on April 19, 1982, amending the order to provide that "all parental rights *and duties* of John Michael Vine . . . are . . . terminated. . . ." (Emphasis added.)

On May 21, 1982, the State of Nevada moved to intervene in the above action and obtain relief from, or a stay of, the amended order. The State argued that the *nunc pro tunc* amendment improperly altered the substance as well as the form of the prior order. The State also suggested that if the parental rights termination order cut off Amanda Vine's right to support, the failure to provide her with a guardian *ad litem*, notice, and a hearing in that proceeding violated her due process rights.

Judge Guy denied the State's motion to intervene. He specifically found that, at the time the order terminating parental rights was entered, all parties and the court understood and intended that the order would terminate in all respects the

parental relationship between John Vine and Amanda Vine, including the former's obligation of support. The appeal in Case No. 14264 followed, and was eventually consolidated with Case No. 13727.

EFFECT OF AN ORDER TERMINATING PARENTAL RIGHTS

Appellants' central argument is that the Legislature was aware of the difference between rights on the one hand and responsibilities or obligations on the other, and the absence of the latter terms from NRS 128.110[1] indicates the Legislature's intention that parental responsibilities such as child support should continue despite a termination of parental rights. Appellants note that NRS 127.160 expressly provides that entry of a final decree of adoption relieves the natural parents of all parental responsibilities for, as well as rights over, the adopted child.[2] They also point out that while NRS 128.015 defines "parent and child relationship" to include both rights and obligations,[3] NRS 128.110 does not state that an order terminating

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[1]In 1975, NRS 128.110 provided as follows:

> Whenever the procedure described in this chapter has been followed, and upon making the finding required by NRS 128.105 at a hearing upon the petition, the court shall make a temporary or final written order, signed by the judge presiding in such court, judicially depriving the parent or parents of the custody and control of, and terminating the parental rights of the parent or parents with repsect to such minor person, and declaring such person to be free from such custody or control, and placing those rights in some person or agency qualified by the laws of this state to provide services and care to children, or to receive any children for placement. Whenever a temporary order is made, the court shall retain jurisdiction of the matter and may thereafter, and upon such notice as shall be required by the court, hear further evidence and may enter any order which could have been made on the completion of the original hearing.

NRS 128.110 was amended in 1981 to alter some terminology and remove the provisions for temporary orders, making all such orders final. The language concerning the effect of the order remains substantially unchanged.

[2]NRS 127.160 provides in relevant part as follows:

> After a decree of adoption is entered, the natural parents of an adopted child shall be relieved of all parental responsibilities for such child, and they shall not exercise or have any rights over such adopted child or his property. The child shall not owe his natural parents or their relatives any legal duty nor shall he inherit from his natural parents or kindred.

[3]NRS 128.015 provides as follows:

> 1. "Parent and child relationship" includes all rights, privileges and obligations existing between parent and child, including rights of inheritance.
>
> 2. As used in this section, "parent" includes an adoptive parent.

parental rights shall sever the parent and child relationship. Appellants conclude that only a final decree of adoption operates to terminate both the rights and responsibilities of a parent.

We must disagree. In Roelfs v. Sam P. Wallingford, Inc., 486 P.2d 1371 (Kan. 1971), the Kansas Supreme Court construed a statute much like NRS 128.110. The statute provided that when the court adjudged a parent or parents to be unfit, it could "make an order permanently depriving such parents, or parent, of parental rights" and commit the child to an appropriate person or institution. On the basis of the strong language of the statute, the general tenor and purpose of the act, and the reciprocal nature of the rights and duties arising from the parent-child relationship, the court determined that an order terminating parental rights under the statute also cut off all parental obligations, including the obligation of support. *See* In Interest of Ingold, 610 P.2d 130 (Kan.App. 1980); In Interest of Wheeler, 601 P.2d 15 (Kan.App. 1979). We find the reasoning in *Roelfs* persuasive.

This Court has already stated its awareness "of the seriousness and of the terrible finality of a decree terminating parental rights." Carson v. Lowe, 76 Nev. 446, 451, 357 P.2d 591, 594 (1960). *See* Chapman v. Chapman, 96 Nev. 290, 295, 607 P.2d 1141, 1145 (1980) (termination of parental rights is drastic measure; evidence in case does not clearly show that severance of all ties with natural parent will serve child's best interests). We note that in 1981 the Legislature enacted NRS 128.120,* demonstrating the legislative intention to make termination orders binding and irrevocable as to both child and parents.

The general purpose of Chapter 128 is to provide a method for ending the parent-child relationship, where doing so is necessary to further the best interests of the child. *See* NRS 128.005(2)(c); NRS 128.090. In NRS 128.005(2)(a), the Legislature found and declared that "[s]everance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination." As noted above, NRS 128.015 defines "parent and child relationship" to include obligations as well as rights. Moreover, NRS 424.080 refers to the termination of both

*NRS 128.120 provides in relevant part as follows:

> Any order made and entered by the court under the provisions of NRS 128.110 is conclusive and binding upon the person declared to be free from the custody and control of his parent or parents . . . . After the making of the order, the court has no power to set aside, change or modify it, but nothing in this chapter impairs the right of appeal.

"parental rights and duties" by order of a court of competent jurisdiction.[1]

We believe that these various statutory provisions adequately demonstrate the legislative intention to have an order terminating parental rights completely sever the parent-child relationship, terminating all rights and obligations of both parent and child. Complete severance of the realtionship removes all connections which may otherwise engender feelings of continuing attachment or right, and gives the child an unrestrained opportunity to prepare for a new home environment. We therefore adopt the position of the court in Anguis v. Superior Court, 429 P.2d 702 (Ariz.App. 1967), as follows:

> [W]e construe the term "parental rights" in the broader term as the sum total of the rights of the parent or parents in and to the child as well as the rights of the child in and to the parent or parents. In other words, we construe parental rights to include both parental rights and parental obligations.

Id. at 705. *See* Sernaker v. Ehrlich, 86 Nev. 277, 281, 468 P.2d 5, 7 (1970) (dicta) ("within parental 'rights' there are parental 'duties', few of which [the father] performed. ... .").

The purpose of the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) is to improve and extend the enforcement of existing duties of support against persons presently legally liable for such support. Moffat v. Moffat, 612 P.2d 967, 975 (Cal. 1980). *See* State ex rel. Welfare Div. v. Hudson, 97 Nev. 386, 389, 632 P.2d 1148, 1149 (1981). *See also* NRS 130.030; NRS 425.360(1). Because the 1975 order terminating John Vine's parental rights under NRS 128.110 also completely extinguished all of his legal duties and responsibilities with respect to his daughter, the State has no basis for its RURESA action against him. We therefore affirm the judgment of the district court dismissing the State's RURESA petition in Case No. 13727.

As the order terminating parental rights also terminated John Vine's parental duties, the *nunc pro tunc* amendment of the 1975 order, while superfluous, was not erroneous. Moreover, the district judge specifically found that the court and the parties had intended the order, at the time it was entered, to

[1]NRS 424.080 provides as follows:

> Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care, custody and control of a child under 18 years of age, unless parental rights and duties have been terminated by order of a court of competent jurisdiction.

eliminate all of John Vine's parental rights and obligations, including the obligation of child support. Hence, the *nunc pro tunc* amendment may be considered correction of a "clerical" rather than "judicial" omission, as the omission "cannot reasonably be attributed to the exercise of judicial consideration or discretion." Channel 13 of Las Vegas v. Ettlinger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978), *quoting* Marble v. Wright, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961). *See* Smith v. Epperson, 72 Nev. 66, 69-70, 294 P.2d 362, 363-64 (1956); Wallace v. Wallace, 520 P.2d 1221, 1224-25 (Kan. 1974). We therefore affirm the judgment of the district court denying the State's motion to intervene in Case No. 14264.

We have considered the other contentions raised by the appellants and found them to be without merit. We affirm the judgments in both appeals.

MANOUKIAN, C. J., and SPRINGER, STEFFEN, and GUNDERSON, JJ., concur.

NOTE—These printed advance opinions are mailed out immediately as a service to members of the bench and bar. They are subject to modification or withdrawal possibly resulting from petitions for rehearing. Any such action taken by the court will be noted on subsequent advance sheets.

This opinion is subject to formal revision before publication in the preliminary print of the Pacific Reports. Readers are requested to notify the Clerk, Supreme Court of Nevada, Carson City, Nevada 89710, of any typographical or other formal errors in order that corrections may be made before the preliminary print goes to press.

C. R. DAVENPORT, *Clerk.*

128.005 Legislative declaration and findings.

1. The legislature declares that the preservation and strengthening of family life is a part of the public policy of this state.

2. The legislature finds that:

(a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination; and

(b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this state.

(Added to NRS by 1975, 963)

128.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 128.011 to 128.018, inclusive, have the meanings ascribed to them in those sections.

[1:161:1963]—(NRS A 1965, 335; 1975, 965; 1977, 185)

128.011 "Abandoned mother" defined. A mother is "abandoned" if the father or putative father has not provided for her support during her pregnancy or has not communicated with her for a period beginning no later than 3 months after conception and extending to the birth of the child.

(Added to NRS by 1975, 964)

128.012 "Abandonment of child" defined. "Abandonment of child" imports any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child, and a parent or parents of a child who leave the child in the care and custody of another without provision for his support and without communication for a period of 6 months are presumed to have intended to abandon the child.

(Added to NRS by 1975, 963)

128.014 "Neglected child" defined. "Neglected child" is a child:

1. Who lacks the proper parental care by reason of the fault or habits of his parent, guardian or custodian;

2. Whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals or well-being;

3. Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by his physical or mental condition;

4. Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or

5. Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of himself or others,
and the parent's neglect need not be willful.
(Added to NRS by 1975, 964)

128.015 "Parent and child relationship," "parent" defined.
1. "Parent and child relationship" includes all rights, privileges and obligations existing between parent and child, including rights of inheritance.
2. As used in this section, "parent" includes an adoptive parent.
(Added to NRS by 1975, 964)

128.016 "Putative father" defined. "Putative father" means a person who is or is alleged or reputed to be the father of an illegitimate child.
(Added to NRS by 1975, 964)

128.018 "Unfit parent" defined. "Unfit parent" is any parent of a child who, by reason of his fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support, or who knowingly permits such child to associate with vagrants, vicious or immoral persons, or to live in a disreputable place.
(Added to NRS by 1975, 964)

128.020 Jurisdiction of district courts. The district courts have jurisdiction in all cases and proceedings under this chapter. The jurisdiction of the district courts extends to any person who should be declared free from the custody and control of either or both of his parents. The words "person who should be declared free from the custody and control of either or both of his parents," include any person under the age of 18 years, who has been abandoned or neglected by either or both his parents, is a child of an unfit parent or parents, or whose mother has been abandoned by his father or putative father, as those terms are defined in this chapter, if the fact of such abandonment, parental unfitness or neglect has not been judicially established by a court of competent jurisdiction.
[2:161:1953]—(NRS A 1975, 965)

128.030 Petition; where may be filed. A petition alleging that there is or resides within the county a child who has been abandoned by his parent or parents, or neglected by either parent, is a child of an unfit parent or parents or whose mother has been abandoned by his father or putative father, and that such child should be declared free from the custody and control of his parent or parents; and praying that the district court deal with such person as provided in this chapter, may be filed at the election of the petitioner in:
1. The county in which such person is found;

2. The county in which the acts complained of occurred; or
3. The county in which the person resides.
[3:161:1953]—(NRS A 1975, 966)

128.040 Who may file petition; investigation. The state welfare administrator of the welfare division of the department of human resources, or his agent, the probation officer, or any other person, including the mother of an unborn child, may file with the clerk of the court a petition under the terms of this chapter. The probation officer of that county or any agency or person designated by the court shall make such investigations at any stage of the proceedings as the court may order or direct.
[4:161:1953]—(NRS A 1963, 892; 1967, 1151; 1973, 1406; 1975, 966)

128.050 Entitlement of proceedings; contents of verified petition.
1. The proceedings shall be entitled, "In the matter of the parental rights as to ....., a minor."
2. A petition shall be verified and may be upon information and belief. It shall set forth plainly:
(a) The facts which bring the child within the purview of this chapter.
(b) The name and residence of the child.
(c) The names and residences of his parents.
(d) The name and residence of the person or persons having custody or control of the child.
(e) The name and residence of his legal guardian, if there be one.
(f) The name and residence of the nearest known relative to the child, residing within the state, if no parent or guardian can be found.
3. If any of the facts required by subsection 2 are not known by the petitioner, the petition shall so state.
4. If the petitioner is a mother filing with respect to her unborn child, the petition shall so state and shall contain the name and residence of the father or putative father, if known.
[5:161:1953]—(NRS A 1975, 966)

128.060 Notice of hearing: Contents and personal service. After a petition has been filed, unless the party or parties to be served shall voluntarily appear and consent to the hearing, the court shall direct the clerk to issue a notice, reciting briefly the substance of the petition and stating the date set for the hearing thereof, and requiring the person served therewith to appear before the court at the time and place if such person desires to oppose the petition. The father or mother of such minor person, if residing within this state, and if his or her place of residence is known to the petitioner, or, if there is no parent so residing, or if the place of residence of such father or mother is not known to the petitioner, then the nearest known relative of such person, if there is any residing within the state, and if his residence and

relationship are known to the petitioner, shall be personally served with the notice herein described.
[6:161:1953]

128.070 Service of notice of hearing by publication.

1. When the father or mother of such minor child on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of the notice of hearing, and the fact appears, by affidavit, to the satisfaction of the court or judge thereof, and it appears, either by affidavit or by a verified petition on file, that the named father or mother in respect to whom the service is to be made is a necessary or proper party to the proceedings, such court or judge may grant an order that the service be made by the publication of the notice of hearing. When the affidavit is based on the fact that the father or mother on whom service is to be made resides out of the state, and the present address of the father or mother is unknown, it shall be a sufficient showing of such fact if the affiant states generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to the affiant when such person so resided there); that such place is the last place in which such person resided to the knowledge of affiant; that such person no longer resides at such place; that affiant does not know the present place of residence of such person or where such person can be found; and that affiant does not know and has never been informed and has no reason to believe that such person now resides in this state; and, in such case, it shall be presumed that such person still resides and remains out of the state, and such affidavit shall be deemed to be a sufficient showing of due diligence to find the father or mother.

2. The order shall direct the publication to be made in a newspaper, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during such time. In case of publication, where the residence of a nonresident or absent father or mother is known, the court or judge shall also direct a copy of the notice of hearing and petition to be deposited in the post office, directed to the person to be served at his place of residence. When publication is ordered, personal service of a copy of the notice of hearing and petition, out of the state, shall be equivalent to completed service by publication and deposit in the post office, and the person so served shall have 20 days after such service to appear and answer or otherwise plead. The service of the notice of hearing shall be deemed complete in cases of publication at the expiration of 4 weeks from the first publication, and in cases when a deposit of a copy of the notice of hearing and petition in the post office is also required, at the expiration of 4 weeks from such deposit.

3. Personal service outside the state upon a father or mother over the age of 18 years may be made in any action where the person served is a resident of this state. When such facts appear, by affidavit, to the

satisfaction of the court or judge thereof, and it appears, either by affidavit or by a verified petition on file, that the person in respect to whom the service is to be made is a necessary or proper party to the proceedings, such court or judge may grant an order that the service be made by personal service outside the state. Such service shall be made by delivering a copy of the notice of hearing together with a copy of the petition in person to the person served. The methods of service are cumulative, and may be utilized with, after or independently of other methods of service.

4. Whenever personal service cannot be made, the court may require, before ordering service by publication or by publication and mailing, such further and additional search to determine the whereabouts of a parent or parents as may be warranted by the facts stated in the affidavit of the petitioner to the end that actual notice to a parent or parents shall be given whenever possible.

5. If one or both of the parents of such minor is unknown, or if the name of either or both of his parents is uncertain, then such facts shall be set forth in the affidavit and the court shall order the notice to be directed and addressed to either the father or the mother of such person, and to all persons claiming to be the father or mother of the person. Such notice, after the caption, shall be addressed substantially as follows: "To the father and mother of the above-named person, and to all persons claiming to be the father or mother of such person."

[7:161:1953]—(NRS A 1967, 355; 1969, 16)

128.080 Form of notice. The notice shall be in substantially the following form:

In the ..... Judicial District Court of the State of Nevada, in and for the County of .....

In the matter of parental rights
as to ....., a minor.

NOTICE

To ....., the father and/or ....., the mother of the above-named person; or, to the father and/or mother of the above-named person, and to all persons claiming to be the father and/or mother of such person; or, to ....., related to the above-named minor as .....:

You are hereby notified that there has been filed in the above-entitled court a petition praying for the termination of parental rights over the above-named minor person, and that the petition has been set for hearing before this court, at the courtroom thereof, at ....., in the County of ....., on the ..... day of ....., 19....., at ..... o'clock .....m., at which time

and place you are required to be present if you desire to oppose the petition.

Dated _____, 19____.

_____
Clerk of court.

(SEAL) By_____
Deputy.

[8:161:1953]

128.085 Petition by mother of unborn child: Notice to father, putative father; time of hearing. When the mother of an unborn child files a petition for termination of the father's parental rights, the father or putative father, if known, shall be served with notice of the hearing in the manner provided for in NRS 128.060 to 128.080, inclusive. The hearing shall not be held until the birth of the child or 6 months after the filing of the petition, whichever is later.

(Added to NRS by 1975, 965)

128.090 Hearing; evidence and postponement. At the time stated in the notice, or at the earliest time thereafter to which the hearing may be postponed, the court shall proceed to hear the petition and shall in all cases require the petitioner to establish the facts and shall give full and careful consideration of all of the evidence presented, with due regard to the rights and claims of the parent or parents of such person and to any and all ties of blood or affection, but with a dominant purpose of serving the best interests of such minor person. In the event of postponement, all persons served, who are not present or represented in court at the time of such postponement, shall be notified thereof by the clerk by registered or certified mail.

[9:161:1953]—(NRS A 1969, 95)

128.095 When putative father presumed to have intended to abandon child. If the putative father of a child fails to acknowledge the child or petition to have his parental rights established in a court of competent jurisdiction before a hearing on a petition to terminate his parental rights, he is presumed to have intended to abandon the child.

(Added to NRS by 1975, 964; A 1979, 1284)

128.100 Appointment of attorney. In any such proceeding the judge may appoint an attorney to act on behalf of such minor person, or on behalf of the petitioner.

[10:161:1953]

128.105 Grounds for termination of parental rights.

1. A finding by the court of any one of the following:

(a) Abandonment of a child;

(b) Neglect of a child; or

(c) Unfitness of a parent,

is sufficient ground for termination of parental rights.

2. Upon a finding by the court that a parent or parents have made only token efforts:

(a) To support or communicate with the child;

(b) To prevent neglect of the child; or

(c) To avoid being an unfit parent,

the court may declare the child abandoned or neglected or the parent unfit.

3. A finding by the court that a mother has been abandoned is sufficient ground for termination of the father's parental rights.

(Added to NRS by 1975, 964)

128.110 Temporary and final orders terminating parental rights. Whenever the procedure described in this chapter has been followed, and upon making the finding required by NRS 128.105 at a hearing upon the petition, the court shall make a temporary or final written order, signed by the judge presiding in such court, judicially depriving the parent or parents of the custody and control of, and terminating the parental rights of the parent or parents with respect to such minor person, and declaring such person to be free from such custody or control, and placing those rights in some person or agency qualified by the laws of this state to provide services and care to children, or to receive any children for placement. Whenever a temporary order is made, the court shall retain jurisdiction of the matter and may thereafter, and upon such notice as shall be required by the court, hear further evidence and may enter any order which could have been made on the completion of the original hearing.

[11:161:1953]—(NRS A 1975, 966)

128.120 Effect of final order. Any final order made and entered by the court under the provisions of NRS 128.110 shall be conclusive and binding upon the person declared to be free from the custody and control of his parent or parents, and upon all other persons who have been served with notice by publication or otherwise, as provided by this chapter. After the making of such final order, the court shall have no power to set aside, change or modify the same; but nothing in this chapter shall be construed to impair the right of appeal.

[12:161:1953]

128.130 Notice to produce; warrant of arrest; contempts. At any time after the filing of the petition, notice may issue requiring any person having the custody or control of such minor person, or the person with whom such person is, to appear with such person at a time and place stated in the notice. In case such notice cannot be served, or the party served fails, without reasonable cause, to obey it, a warrant of arrest shall issue on the order of the court against the person so cited, or against the minor himself, or against both; or, if there is no party to be served with such notice, a warrant of arrest may be issued against the minor person. If any party noticed, as provided for in this section,

fails without reasonable cause to appear and abide by the order of the court, or to bring such minor person, such failure shall constitute a contempt of court.
[13:161:1953]

128.140 Expenses to be county charges. All expenses incurred in complying with the provisions of this chapter shall be a county charge if so ordered by the court.
[14:161:1953]—(NRS A 1975, 967)

128.150 Termination of parental rights of father when child becomes subject of adoption.
1. If a mother relinquishes or proposes to relinquish for adoption a child who has:
(a) A presumed father under subsection 1 of NRS 126.051;
(b) A father whose relationship to the child has been determined by a court; or
(c) A father as to whom the child is a legitimate child under chapter 126 of NRS, under prior law of this state or under the law of another jurisdiction,
and the father has not consented to the adoption of the child or relinquished the child for adoption, a proceeding must be brought pursuant to this chapter and a determination made of whether a parent and child relationship exists and if so, if it should be terminated.
2. If a mother relinquishes or proposes to relinquish for adoption a child who does not have:
(a) A presumed father under subsection 1 of NRS 126.051;
(b) A father whose relationship to the child has been determined by a court;
(c) A father as to whom the child is a legitimate child under chapter 126 of NRS, under prior law of this state or under the law of another jurisdiction; or
(d) A father who can be identified in any other way,
or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.
3. In an effort to identify and protect the interests of the natural father, the court which is conducting a proceeding pursuant to this chapter shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following:
(a) Whether the mother was married at the time of conception of the child or at any time thereafter.
(b) Whether the mother was cohabiting with a man at the time of conception or birth of the child.
(c) Whether the mother has received support payments or promises of support with respect to the child or in connection with her preg-

nancy.

(d) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

4. If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each must be given notice of the proceeding in accordance with subsection 6 of this section or with this chapter, as applicable. If any of them fails to appear or, if appearing, fails to claim custodial rights, such failure constitutes abandonment of the child. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

5. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of any appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this subsection, or this chapter, the order cannot be questioned by any person in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter.

6. Notice of the proceeding must be given to every person identified as the natural father or a possible natural father in the manner provided by law and the Nevada Rules of Civil Procedure for the service of process in a civil action, or in any manner the court directs. Proof of giving the notice must be filed with the court before the petition is heard.

(Added to NRS by 1979, 1277)